

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM JAMES WALLACE, II,

Plaintiff,

v.

J. WHITE, et al.,

Defendants.

No. 1:20-cv-00844-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT PLAINTIFF'S  
SECOND AMENDED COMPLAINT  
PROCEED ON PLAINTIFF'S CLAIMS  
AGAINST DEFENDANTS LOPEZ, WADE,  
WHITE AND DOE FOR DELIBERATE  
INDIFFERENCE TO UNCONSTITUTIONAL  
CONDITIONS OF CONFINEMENT AND  
THAT ALL OTHER DEFENDANTS AND  
CLAIMS BE DISMISSED

(ECF No. 16)

TWENTY-ONE DAY DEADLINE

ORDER DENYING PLAINTIFF'S MOTION  
FOR THE APPOINTMENT OF PRO BONO  
COUNSEL

(ECF No. 16)

ORDER DIRECTING CLERK OF COURT TO  
APPOINT DISTRICT JUDGE

Plaintiff William James Wallace, II ("Plaintiff") is a state inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 15, 2020. (ECF No. 1). Now before the Court is Plaintiff's second amended complaint, filed on October 26, 2020. (ECF No. 16). The second

1 amended complaint brings claims concerning the housing conditions at his former institution of  
2 confinement, Wasco State Prison, and concerning the prison's failure to comply with the  
3 Americans with Disabilities Act. Plaintiff's complaint also requests the Court to appoint pro bono  
4 counsel.

5 The Court has reviewed the complaint and finds that the following claims should proceed  
6 past the screening stage: Plaintiff's Eighth Amendment claim for unconstitutional conditions of  
7 confinement against Defendants Lopez, Wade, White and Doe. The Court recommends  
8 dismissing all other claims and defendants. In addition, the Court denies Plaintiff's motion for the  
9 appointment of pro bono counsel.

10 Plaintiff has twenty-one days from the date of service of these findings and  
11 recommendations to file his objections to the findings and recommendations.

## 12 **I. PROCEDURAL BACKGROUND**

13 This is the third complaint the Court has screened in this action. In its first screening  
14 order, the Court found that Plaintiff's original complaint, which brought claims under the  
15 Americans with Disabilities Act, the Eighth Amendment, and the First Amendment, failed to  
16 comply with Federal Rules of Civil Procedure 18 and 20 because it proceeded on unrelated claims  
17 against different defendants. (ECF No. 9). The Court provided legal standards and granted  
18 Plaintiff leave to amend. (*Id.*).

19 Plaintiff filed a first amended complaint on September 23, 2020. (ECF No. 12). It brought  
20 substantially the same claims as in the original complaint. In its second screening order, the Court  
21 again found Plaintiff's complaint failed to comply with Rules 18 and 20, for the same reason as in  
22 the first screening order. (ECF No. 13).

23 Plaintiff filed his second amended complaint on October 26, 2020, (ECF No. 16), which is  
24 now before the Court for screening.

## 25 **II. SCREENING REQUIREMENT**

26 The Court is required to screen complaints brought by inmates seeking relief against a  
27 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
28 Court must dismiss a complaint or portion thereof if the inmate has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
 2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).  
 3 As Plaintiff is proceeding *in forma pauperis*, the Court may also screen the complaint under 28  
 4 U.S.C. § 1915. “Notwithstanding any filing fee, or any portion thereof, that may have been paid,  
 5 the court shall dismiss the case at any time if the court determines that the action or appeal fails to  
 6 state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint is required to contain “a short and plain statement of the claim showing that  
 8 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
 9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
 10 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
 11 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
 12 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
 13 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this  
 14 plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not  
 15 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681  
 16 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff’s legal  
 17 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

18 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal  
 19 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
 20 *pro se* complaints should continue to be liberally construed after *Iqbal*).

### 21 **III. ALLEGATIONS IN THE COMPLAINT**

22 Plaintiff’s second amended complaint alleges the following:

23 Plaintiff was incarcerated at Wasco State Prison, which is operated by Defendant  
 24 California Department of Corrections and Rehabilitation (“CDCR”). Defendants Lopez and Wade  
 25 are correctional officers employed at Wasco. Defendant White is the assistant superintendent at  
 26 Wasco. Defendant Doe is an unidentified CDCR employee.

27 Since March 2017, Plaintiff has had non-union of the medical malleolus with spastic  
 28 paralysis, which is a chronic condition sometimes called hammertoe. Plaintiff’s left foot flexes

1 and his toes are curled into a claw. He always requires a wheelchair for mobility.

2 Plaintiff arrived at Wasco on January 21, 2020. During his transfer, his medically  
3 necessary orthopedic shoes were lost. He is unable to use CDCR's standard-issued shoes. Plaintiff  
4 has requested orthopedic shoes but CDCR has failed to provide them. Without those shoes,  
5 Plaintiff is unable to safely transfer from his wheelchair to a toilet, his bed, a chair, etc. In  
6 addition, it leaves him without shoes in an unsanitary environment.

7 Plaintiff grieved his lack of the shoes. Defendants have delayed providing the shoes and  
8 state their intention to do so.

9 Plaintiff's housing unit, H2, contains 200 inmates, four showers, and only one ADA-  
10 accessible shower. Overcrowding prevents Plaintiff from meeting his personal hygiene needs.  
11 Plaintiff has also grieved over an insufficient number of toilets and a denial of access to  
12 handicapped-accessible toilets. Defendants have taken no actions.

13 Unit H2 has inoperable plumbing. Toilets overflow, and the floors are constantly covered  
14 in human waste. The waste causes imminent danger because it transfers to his wheelchair's  
15 wheels and then his hands and clothing.

16 Plaintiff reported this problem to Defendants Lopez, Wade and White. The dangers were  
17 obvious, but no actions were taken to prevent further exposure. Plaintiff also grieved the  
18 unsanitary environment to Defendant Doe, who took no actions to abate further exposure to  
19 human waste.

20 Unit H2 also had inadequate ventilation. The intake registers were located near the  
21 showers. The walls were covered in black mold, and the air was saturated with fumes of feces and  
22 urine. This air was dispensed over the entire unit, both the sleeping area and the dining area.

23 Plaintiff notified Defendant Wade, who ordered maintenance to perform the necessary  
24 cleaning of the intake registers. Maintenance reported they were unable to complete the task  
25 because "the system is too dirty and attempting to clean it would release debris into the  
26 environment."

27 Plaintiff suffered from severe congestion, coughing, irritated eyes, and difficulty breathing  
28 when lying down. Plaintiff sought medical attention for these symptoms. He was prescribed

1 allergy medication, and medical staff confirmed it was caused by the inadequate ventilation in the  
2 unit.

3 Plaintiff grieved the statement concerning maintenance's decision that the ventilation was  
4 too dirty to clean. Defendant Doe failed to take the necessary steps to abate the risk of further  
5 exposure. Plaintiff notified Defendants that he was pursuing a complaint concerning the  
6 conditions of confinement and was transferred the following day. Plaintiff alleges that with  
7 discovery, he will find that Defendants knew of the unconstitutional conditions within Unit H2  
8 but were deliberately indifferent.

#### 9 **IV. ADDITIONAL ACTION**

10 The second amended complaint references a separate ongoing action Defendant brought in  
11 this district: *Wallace v. CDCR*, 1:20-cv-00905-NONE-JLT (PC). The Court takes judicial notice  
12 of that case. Fed. R. Evid. 201; *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir.1980)  
13 (recognizing that under Federal Rule of Evidence 201, "a court may take judicial notice of its own  
14 records in other cases"). In *Wallace v. CDCR*, Plaintiff's action is proceeding on his claims  
15 against the CDCR and individual defendants in their official capacities for violating the ADA, in  
16 part due to the failure to provide Plaintiff with orthotics. *Wallace*, 1:20-cv-905, ECF Nos. 20, 22,  
17 27.

#### 18 **V. SECTION 1983**

19 The Civil Rights Act under which this action was filed provides:

20 Every person who, under color of any statute, ordinance, regulation,  
21 custom, or usage, of any State or Territory or the District of  
22 Columbia, subjects, or causes to be subjected, any citizen of the  
23 United States or other person within the jurisdiction thereof to the  
deprivation of any rights, privileges, or immunities secured by the  
Constitution and laws, shall be liable to the party injured in an action  
at law, suit in equity, or other proper proceeding for redress....

24 42 U.S.C. § 1983. "[Section] 1983 'is not itself a source of substantive rights,' but merely  
25 provides 'a method for vindicating federal rights elsewhere conferred.'" *Graham v. Connor*, 490  
26 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); *see also*  
27 *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*,  
28 697 F.3d 1059, 1068 (9th Cir. 2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 2012);

1 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

2 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under  
3 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or  
4 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *see also Marsh*  
5 *v. Cnty. of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state  
6 law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he  
7 does an affirmative act, participates in another's affirmative act, or omits to perform an act which  
8 he is legally required to do that causes the deprivation of which complaint is made.’” *Preschooler*  
9 *II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting *Johnson v. Duffy*,  
10 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an  
11 official sets in motion a ‘series of acts by others which the actor knows or reasonably should  
12 know would cause others to inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183  
13 (quoting *Johnson*, 588 F.2d at 743). This standard of causation “closely resembles the standard  
14 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d  
15 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.  
16 2008).

17 Additionally, a plaintiff must demonstrate that each named defendant personally  
18 participated in the deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. In other words, there must  
19 be an actual connection or link between the actions of the defendants and the deprivation alleged  
20 to have been suffered by Plaintiff. *See Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658,  
21 691, 695 (1978).

22 Supervisory personnel are generally not liable under § 1983 for the actions of their  
23 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a  
24 supervisory position, the causal link between him and the claimed constitutional violation must be  
25 specifically alleged. *Iqbal*, 556 U.S. at 676-77; *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.  
26 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for relief under  
27 § 1983 based on a theory of supervisory liability, a plaintiff must allege some facts that would  
28 support a claim that the supervisory defendants either personally participated in the alleged

deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or “implement[ed] a policy so deficient that the policy itself is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (citations and internal quotation marks omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). For instance, a supervisor may be liable for his “own culpable action or inaction in the training, supervision, or control of his subordinates,” “his acquiescence in the constitutional deprivations of which the complaint is made,” or “conduct that showed a reckless or callous indifference to the rights of others.” *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991) (internal citations, quotation marks, and alterations omitted).

## VI. ANALYSIS OF PLAINTIFF’S CLAIMS

### A. Pleading Standards

A complaint must comply with the requirements of Federal Rules of Civil Procedure 18 and 20. Under these rules, a plaintiff may not proceed on a myriad of unrelated claims against different defendants in a single action. Fed. R. Civ. P. 18(a), 20(a)(2).

The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.’ Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g).”

*K’napp v. California Dept. of Corrections*, 2013 WL 5817765, at \*2 (E.D. Cal., Oct. 29, 2013), *aff’d sub nom. K’napp v. California Dept. of Corrections & Rehabilitation*, 599 Fed. Appx. 791 (9th Cir. 2015) (alteration in original) (quoting *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). *See also* Fed. R. Civ. P. 20(a)(2) (“Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the



1 action.”).

2 Plaintiff brings two types of claims. The first type concerns unsanitary conditions, raw  
3 sewage, and mold. The second concerns whether Plaintiff has received reasonable  
4 accommodations under the Americans with Disabilities Act (“ADA”). These claims are not  
5 related and thus violate Federal Rules of Civil Procedure 18 and 20.

6 This is the third time the Court has found Plaintiff failed to comply with Rules 18 and 20.  
7 The Court previously warned Plaintiff that continued failures to comply with Rules 18 and 20  
8 could lead to the Court severing claims:

9 The Court notes the above analysis is nearly identical to the analysis the Court  
10 provided with respect to Plaintiff’s first complaint. **Plaintiff may not pursue  
11 multiple unrelated actions in one lawsuit. If Plaintiff amends his  
12 complaint, he must choose on claim or related set of claims to pursue.**  
13 Other actions may be brought in separate lawsuits. If Plaintiff’s second  
14 amended complaint fails to comply with Rules 18 and 20, the Court may  
15 choose to pick one claim and sever the remainder.

16 (ECF No. 13 at 6) (emphasis in original).

17 Because Plaintiff is pursuing a separate case concerning the Americans with Disabilities  
18 Act, *see Wallace v. CDCR*, 1:20-cv-00905-NONE-JLT (PC), the Court recommends dismissing  
19 Plaintiff’s ADA claim for failure to comply with Federal Rules of Civil Procedure 18 and 20  
20 without prejudice.

## 21 **B. Conditions of Confinement Claims**

### 22 **1. Legal Standards**

23 “It is undisputed that the treatment a prisoner receives in prison and the conditions under  
24 which [the prisoner] is confined are subject to scrutiny under the Eighth Amendment.” *Helling v.*  
25 *McKinney*, 509 U.S. 25, 31 (1993); *see also Farmer v. Brennan*, 511 U.S. 825, 832 (1994).  
26 Conditions of confinement may, consistent with the Constitution, be restrictive and harsh. *See*  
27 *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th  
28 Cir. 2006); *Osolinski v. Kane*, 92 F.3d 934, 937 (9th Cir. 1996); *Jordan v. Gardner*, 986 F.2d  
1521, 1531 (9th Cir. 1993) (*en banc*). Prison officials must, however, provide prisoners with  
“food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*,



801 F.2d 1080, 1107 (9th Cir. 1986), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995); *see also Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982); *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981).

Two requirements must be met to show an Eighth Amendment violation. *Farmer*, 511 U.S. at 834. “First, the deprivation must be, objectively, sufficiently serious.” *Id.* (internal quotation marks and citation omitted). Second, “prison officials must have a sufficiently culpable state of mind,” which for conditions of confinement claims, “is one of deliberate indifference.” *Id.* (internal quotation marks and citation omitted). Prison officials act with deliberate indifference when they know of and disregard an excessive risk to inmate health or safety. *Id.* at 837. The circumstances, nature, and duration of the deprivations are critical in determining whether the conditions complained of are grave enough to form the basis of a viable Eighth Amendment claim. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2006). Mere negligence on the part of a prison official is not sufficient to establish liability, but rather, the official's conduct must have been wanton. *Farmer*, 511 U.S. at 835; *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

“‘The occasional presence of a rodent is insufficient to establish the objective component of an Eighth Amendment claim, which requires that a deprivation be sufficiently serious.’” *Jackson v. Walker*, 2009 WL 1743639 at \*8 (E.D. Cal. 2009) (quoting *Tucker v. Rose*, 955 F.Supp. 810, 816 (N.D. Ohio 1997)). However, a “lack of sanitation that is severe or prolonged can constitute an infliction of pain within the meaning of the Eighth Amendment.” *Anderson v. Cty. of Kern*, 45 F.3d 1310, 1314 (9th Cir.), *opinion amended on denial of reh'g*, 75 F.3d 448 (9th Cir. 1995). *See also Taylor v. Riojas*, 141 S.Ct. 52, 53-54 (2020) (finding no qualified immunity to officers who housed inmate “in cells teeming with human waste” for six days).

## 2. Analysis of Plaintiff's Claims

Here, Plaintiff alleges that there are insufficient toilets and poor plumbing in Unit H2, a 200-person dorm, leading to human feces on the floor, which subsequently gets on his hands and clothes. Plaintiff also alleges there are too few showers, so he is unable to clean himself. Plaintiff

1 further alleges inadequate ventilation in the unit leads to mold. These allegations are sufficiently  
2 serious at this screening stage to allege an Eighth Amendment violation.

3 Plaintiff alleges he reported the problems to Defendants Lopez, Wade, White and Doe.  
4 However, the problems persisted and there were no actions to abate the plumbing despite the  
5 obvious presence of feces. Plaintiff further alleges that even though Defendant Wade ordered  
6 maintenance to work on the ventilation, none of the problems were fixed. For screening purposes,  
7 these allegations are sufficient to show deliberate indifference. As such, the Court will allow  
8 Plaintiff's deliberate indifference claims to go forward.

9 **VII. MOTION TO APPOINT COUNSEL**

10 Plaintiff's second amended complaint also includes a motion to appoint counsel. This is  
11 Plaintiff's second motion for the appointment of counsel, which the Court denied. (*See* ECF Nos.  
12 10, 11). For the same reasons as before, the Court denies Plaintiff's renewed motion to appoint  
13 counsel without prejudice.

14 **VIII. CONCLUSION, RECOMMENDATIONS AND ORDER**

15 The Court has screened Plaintiff's complaint and finds that it states cognizable claims  
16 against Defendants Lopez, Wade, White and Doe for violating Plaintiff's Eighth Amendment  
17 rights with respect to the conditions of confinement at Wasco and that Plaintiff's claims under the  
18 ADA should be dismissed without prejudice for failure to comply with Federal Rules of Civil  
19 Procedure 18 and 20.

20 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 21 1. This case proceed on Plaintiff's claims against Defendants Lopez, Wade, White  
22 and Doe for violating Plaintiff's Eighth Amendment rights by being deliberately  
23 indifferent to the unconstitutional conditions of confinement at Wasco; and
- 24 2. All other Defendants and claims be dismissed without prejudice.

25 In addition, it is HEREBY ORDERED that:

- 26 A. Plaintiff's motion to appoint counsel (ECF No. 16) be DENIED; and
- 27 B. The clerk of court is respectfully directed to appoint a district judge to this case.

28 These findings and recommendations will be submitted to the United States district judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one  
2 (21) days after being served with these findings and recommendations, the parties may file  
3 written objections with the Court. The document should be captioned “Objections to Magistrate  
4 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections  
5 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772  
6 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7  
8 IT IS SO ORDERED.

9 Dated: **January 12, 2021**

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE